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9 **BEFORE THE**  
10 **BOARD OF REGISTERED NURSING**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

OAH No. 2008070098

13 KATHLEEN E. MCCARTHY TILLEY, R.N.  
23852 Pacific Coast Highway  
14 Box 577  
Malibu, CA 90265

Agency Case No. 2008-307

**FIRST AMENDED  
ACCUSATION**

15 Registered Nurse License No. 549544

16 Respondent.  
17

18 Complainant alleges:

19 PARTIES

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this First Amended  
21 Accusation solely in her official capacity as the Executive Officer of the Board of Registered  
22 Nursing, Department of Consumer Affairs.

23 2. On or about November 5, 1998, the Board of Registered Nursing issued  
24 Registered Nurse License Number 549544 to Kathleen Elizabeth Tilley, aka Kathleen Elizabeth  
25 McCarthy Tilley (Respondent). The Registered Nurse license was in full force and effect at all  
26 times relevant to the charges brought herein and will expire on March 31, 2010, unless renewed.

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JURISDICTION

3. This First Amended Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws.  
All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

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1                   7.       Section 2762 of the Code states:

2                   In addition to other acts constituting unprofessional conduct within the  
3                   meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct  
4                   for a person licensed under this chapter to do any of the following:

5                   (a) Obtain or possess in violation of law, or prescribe, or except as  
6                   directed by a licensed physician and surgeon, dentist, or podiatrist administer to  
7                   himself or herself, or furnish or administer to another, any controlled substance as  
8                   defined in Division 10 (commencing with Section 11000) of the Health and  
9                   Safety Code or any dangerous drug or dangerous device as defined in Section  
10                  4022.

11                  (b) Use any controlled substance as defined in Division 10  
12                  (commencing with Section 11000) of the Health and Safety Code, or any  
13                  dangerous drug or dangerous device as defined in Section 4022, or alcoholic  
14                  beverages, to an extent or in a manner dangerous or injurious to himself or  
15                  herself, any other person, or the public or to the extent that such use impairs his or  
16                  her ability to conduct with safety to the public the practice authorized by his or  
17                  her license.

18                  (c) Be convicted of a criminal offense involving the prescription,  
19                  consumption, or self-administration of any of the substances described in  
20                  subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
21                  record pertaining to, the substances described in subdivision (a) of this section, in  
22                  which event the record of the conviction is conclusive evidence thereof.

23                  . . . .

24                  8.       Section 4022 of the Code states

25                  "Dangerous drug" or "dangerous device" means any drug or device unsafe  
26                  for self-use in humans or animals, and includes the following:

27                  (a) Any drug that bears the legend: "Caution: federal law prohibits  
28                  dispensing without prescription," "Rx only," or words of similar import.

29                  (b) Any device that bears the statement: "Caution: federal law  
30                  restricts this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or  
31                  words of similar import, the blank to be filled in with the designation of the  
32                  practitioner licensed to use or order use of the device.

33                  (c) Any other drug or device that by federal or state law can be  
34                  lawfully dispensed only on prescription or furnished pursuant to Section 4006.

35                  9.       Section 490 of the Code states:

36                  A board may suspend or revoke a license on the ground that the licensee  
37                  has been convicted of a crime, if the crime is substantially related to the  
38                  qualifications, functions, or duties of the business or profession for which the  
39                  license was issued. A conviction within the meaning of this section means a plea  
40                  or verdict of guilty or a conviction following a plea of nolo contendere. Any  
41                  action which a board is permitted to take following the establishment of a

1 conviction may be taken when the time for appeal has elapsed, or the judgment of  
2 conviction has been affirmed on appeal, or when an order granting probation is  
3 made suspending the imposition of sentence, irrespective of a subsequent order  
4 under the provisions of Section 1203.4 of the Penal Code.

5 10. Section 492 of the Code states:

6 Notwithstanding any other provision of law, successful completion of any  
7 diversion program under the Penal Code, or successful completion of an alcohol  
8 and drug problem assessment program under Article 5 (commencing with section  
9 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit  
10 any agency established under Division 2 ([Healing Arts] commencing with  
11 Section 500) of this code, or any initiative act referred to in that division, from  
12 taking disciplinary action against a licensee or from denying a license for  
13 professional misconduct, notwithstanding that evidence of that misconduct may  
14 be recorded in a record pertaining to an arrest.

15 11. Section 493 of the Code states:

16 Notwithstanding any other provision of law, in a proceeding conducted by  
17 a board within the department pursuant to law to deny an application for a license  
18 or to suspend or revoke a license or otherwise take disciplinary action against a  
19 person who holds a license, upon the ground that the applicant or the licensee has  
20 been convicted of a crime substantially related to the qualifications, functions,  
21 and duties of the licensee in question, the record of conviction of the crime shall  
22 be conclusive evidence of the fact that the conviction occurred, but only of that  
23 fact, and the board may inquire into the circumstances surrounding the  
24 commission of the crime in order to fix the degree of discipline or to determine if  
25 the conviction is substantially related to the qualifications, functions, and duties  
26 of the licensee in question.

27 As used in this section, "license" includes "certificate," "permit,"  
28 "authority," and "registration."

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the  
qualifications, functions or duties of a registered nurse if to a substantial degree it  
evidences the present or potential unfitness of a registered nurse to practice in a  
manner consistent with the public health, safety, or welfare. Such convictions or  
acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to,  
those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration  
pursuant to Section 290 of the Penal Code.

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13. California Code of Regulations, Title 16, section 1445 states:

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(b) When considering the suspension or revocation of a license on the ground that a licensed vocational nurse has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## DRUGS

15. Methadone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (c)(14), and is a dangerous drug pursuant to Business and Professions Code section 4022.

16. Cocaine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(6), and is a dangerous drug pursuant to Business & Professions Code section 4022.

**FIRST CAUSE FOR DISCIPLINE**

**(October 25, 2006 Criminal Conviction for DUI (Drugs) on April 29, 2006)**

17. Respondent has subjected her license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is

1 substantially related to the qualifications, functions, and duties of a registered nurse. The  
2 circumstances are as follows:

3 a. On or about October 25, 2006, in a criminal proceeding entitled  
4 *People of the State of California v. Kathleen Elizabeth McCarthy-Tilley*, in Kings County  
5 Superior Court (Hanford Division), Case No. 06CM2307, Respondent was convicted on her plea  
6 of nolo contendere for violating Vehicle Code section 23152, subdivision (a), driving a vehicle  
7 while under the influence of controlled substances (cocaine and methadone), a misdemeanor, and  
8 Vehicle Code section 40508, subdivision (a), failure to appear as promised, a misdemeanor.

9 b. As a result of the conviction, on or about October 25, 2006,  
10 Respondent was sentenced to two days in the county jail, five years formal probation,  
11 completion of a three-month first offender DUI program, 40 hours of community service, total  
12 abstention from alcohol and drugs, submission to chemical testing, and payment of \$1,899.00 in  
13 fines and fees. A bench warrant is currently outstanding for Respondent's arrest for her failure  
14 to complete the terms and conditions of her probation.

15 c. The circumstances that led to the conviction were that in or about  
16 the early morning hours of April 29, 2006, a patrol deputy from the Kings County Sheriff's  
17 Office requested assistance from the California Highway Patrol to perform a drunk driving  
18 evaluation on Respondent. The deputy initially observed Respondent stopped in her vehicle in  
19 the number two lane with a green traffic light at the closest intersection. As the deputy  
20 approached, Respondent proceeded through the intersection as the light was turning red. The  
21 deputy observed Respondent's vehicle swerving from the curb on the right into the number one  
22 lane. Respondent was pulled over and detained until the CHP responded to conduct the  
23 evaluation. The CHP officer noted that Respondent was acting lethargic and drowsy; she  
24 appeared to fall asleep while standing several times. She had trouble forming sentences and she  
25 could not remember where she had been. The CHP officer explained and demonstrated several  
26 field sobriety tests (horizontal gaze nystagmus, hand pat, Rhomberg balance, and one-leg stand).  
27 Respondent was not able to successfully complete any of the tests. A preliminary alcohol  
28 screening (PAS) test showed no alcohol in Respondent's system. Based on the officer's

1 observations and Respondent's objective symptoms of intoxication, the officer concluded that  
2 Respondent was driving under the influence of a narcotic substance. During an inventory search  
3 of Respondent's vehicle, the CHP officer located several small plastic baggies of pills and  
4 capsules throughout the vehicle. A quantity of the pills were labeled "Methadose, 10 mg." After  
5 being placed in the officer's vehicle, Respondent immediately slumped over and passed out  
6 across the rear seat. In a subsequent interview, Respondent's domestic partner told the officer  
7 that Respondent was on a regular prescription for methadone and that she often took too many  
8 pills. At the Kings County Jail, Respondent's blood was drawn. Respondent exhibited a  
9 dangerously low heart rate, so she was transported to a local hospital for a medical clearance,  
10 then returned to the jail. Respondent's blood sample subsequently tested positive for cocaine  
11 and methadone, as evidenced by the Central Valley Toxicology Report dated May 9, 2006.

## 12 **SECOND CAUSE FOR DISCIPLINE**

### 13 **(Unprofessional Conduct - Self-Administration of a Controlled Substance)**

14 18. Respondent has subjected her license to disciplinary action under section  
15 2762, subdivision (a) of the Code in that on or about April 29, 2006 Respondent administered  
16 cocaine to herself, which was demonstrated by the analysis of the blood drawn following her  
17 arrest, as described in paragraph 17, above. Respondent's self-administration of cocaine, a  
18 controlled substance and dangerous drug as defined in Section 4022, constitutes unprofessional  
19 conduct.

## 20 **THIRD CAUSE FOR DISCIPLINE**

### 21 **(Unprofessional Conduct - Use of Drug in a Dangerous Manner)**

22 19. Respondent has subjected her license to disciplinary action under section  
23 2762, subdivision (b) of the Code in that on or about April 29, 2006, Respondent used controlled  
24 substances in a manner dangerous and injurious to herself and the public as detailed in paragraph  
25 17, above. Respondent's disregard for herself and the public safety constitutes unprofessional  
26 conduct.

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**FOURTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Conviction of Drug-Related Offense)**

20. Respondent has subjected her license to disciplinary action under section 2762, subdivision (c) of the Code in that Respondent was convicted of driving under the influence of controlled substances as alleged in paragraph 17, above. Respondent's conviction constitutes unprofessional conduct.

**FIFTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Discipline by Another State)**

21. Respondent has subjected her license to disciplinary action under section 2761, subdivision (a)(4) of the Code in that Respondent was the subject of a disciplinary proceeding in another state. The circumstances are as follows:

a. On or about January 31, 2003, *In the Matter of Kathleen E. Tilley, RN, License No. 200040212*, case number 02-53, the Oregon Board of Nursing served on Respondent a Notice of Proposed Suspension of Registered Nurse License at her address of record. The Oregon Board of Nursing proposed to suspend Respondent's license, issued on June 22, 2000, on the grounds that Respondent was determined to be suffering from chemical dependency and failed to comply with the terms and conditions of the Nurse Monitoring Program in violation of Oregon Revised Statutes (ORS) 678.111(1)(e)(g) and 851-046-0020(7)(a)(b). Respondent was given 20 days to request a hearing on the matter.

b. On or about April 24, 2003, following Respondent's default by not requesting a hearing on the proposed suspension, the Oregon Board of Nursing entered an Order suspending Respondent's nursing license.

c. On or about April 24, 2003, Respondent's registered nurse license issued by the State of Oregon expired and was not renewed.

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